APPENDIX A

SUPREME JUDICIAL COURT OF MAINE

RUPERT WATSON d/b/a MAINE-WIDE ADJUSTERS,

—v.—

STATE OF MAINE COMMISSIONER OF BANKING.

Oct. 27, 1966.

Malcolm S. Stevenson, Bangor, David R. Downing, Bucksport, for plaintiff.

Jerome S. Matus, Asst. Atty. Gen., Augusta, for defendant.

Before WILLIAMSON, C. J., and
WEBBER, TAPLEY, MARDEN, RUDMAN,
and DUFRESNE, JJ.

MARDEN, *Justice.*

On report.

The factual background is as follows: During the period September, 1948 to January, 1960, plaintiff owned and operated a collection agency. In January, 1960, he was found guilty of embezzlement and executed a sentence in the Maine State Prison from which he was released in February of 1963. Upon his release, he renewed the operation of his collection agency. The 102nd Legislature (1965) passed "An Act regulating collection agencies" (Chapter

430 P. L. 1965), effective January 1, 1966, which is now 32 M. R. S. A. §§571-583 inclusive. By the terms of this Act a collection agency as therein defined (§571), and including a proprietorship so operating, with exclusions (§572), is required to procure an annual license (§573); supply upon request financial statements, file surety company bond and generally is subject to supervision of the State Bank Commissioner. By Section 575 no license is to be granted an applicant who has been convicted in the State or Federal Courts of listed crimes, including embezzlement.

In compliance with this Act, the plaintiff applied for a license, supported by the required financial statement and cash deposit as a bond, which application was denied on the basis of plaintiff's reference conviction.

Plaintiff then petitioned for injunctive relief against the enforcement of the statute, and for a declaratory judgment on the validity of the legislation. The case was reported.

The complaint, with amendments, attacks the constitutionality of the statute as being not a proper exercise of the police power of the State, but if it is, that it is discriminatory, that it constitutes an impairment of the obligation of contracts, that it violates constitutional due process, and that it is an *ex post facto* law.

Upon report the issues are expressed as four,—that the defendant's refusal to grant plaintiff a license was (1) the application of an *ex post facto* law, (2) the application of a law retrospectively which impaired the obligation of contracts, (3) deprivation of property without due process of law, and (4) the application of law that is discriminatory, arbitrary and denies plaintiff equal protection of the laws. Our consideration is confined to these issues.

Plaintiff, in his composite attack, challenges the law as exceeding the State's police power. The general power of the State to preserve and promote public welfare, even at the expense of private rights, but within constitutional limitations, and by means reasonably tending to correct some evil or promote some public interest, is basic. State v. Old Tavern Farms, Inc., 133 Me. 468, 470, 471, 180 A. 473, 101 A. L. R. 810. See also Dexter v. Blackden, 93 Me. 473, 484-485, 45 A. 525, citing Cooley on Constitutional Limitations. It is a matter of common knowledge that creditors solicit the aid of collection agencies only after they have exhausted the collection resources within their own organizations and not infrequently only after the claims are written off their books. By virtue of the fact that the creditor has largely given up the claims as realizable assets, their supervision of and interest in the agencies' activities is not lively. This may, and not infrequently does, open the way for the agency to indulge in collection practices and accounting procedures which in the public interest and welfare, including both the credit and debit communities, establish need for, and propriety of, regulation. The legislature was competent to declare the activity as one affecting the public welfare.

> "The wisdom, necessity or expediency of a legislative enactment is not subject to judicial review." Treffry v. Taylor (Wash. 1966) 408 P. 2d 269, [14] 273 (Regulation of Contractors)

See also Reynolds v. Louisiana Board of Alcoholic Beverage Control (1966) 248 La. 639, 181 So. 2d 377, [4] 380 (Regulation of liquor distributors); Ferguson v. Skrupa (Kan. 1963) 372 U. S. 726, 83 S. Ct. 1028, [2-5] 1301, 10

L. Ed. 2d 93 (debt adjusters); State ex rel. Clark v. Brown (1965) 1 Ohio St. 2d 121, 205 N. E. 2d 377, [3] 380 (budget counseling service); and in principle, Baxter v. Waterville Sewerage District, 146 Me. 211, 214, 79 A. 2d 585.

The extent to which regulation in the public interest has been held constitutional is indicated by the substantial list of enterprises so regulated, shown in 16A C. J. S. Constitutional Law §659 b., to which list others periodically have been added.[1]

> "The regulation and licensing of commercial and collection agencies has been upheld, for the most part, against various constitutional objections. Although no extensive line of cases has been developed, it seems clear that as a general matter the singling out of commercial or credit agencies as objects for the exercise of the police power represents a reasonable classification." Annot. 54 A. L. R. 2d 881 §2, 883.

See also Hankins v. Spaulding (1957) 78 Idaho 533, 307 P. 2d 222, and Meyers v. Matthews (1955) 270 Wis. 453, 71 N. W. 2d 368, 54 A. L. R. 2d 868.

Placing the collection business under the supervision of a state commission through a Credit and Collection Board (§583), requiring evidence from the agency bearing upon its "reputation, integrity, competence and net worth" (§573, ¶4), requiring the agency to supply surety bond "to safeguard the interests of the public" (§574), establishing qualifications for those proposing to engage in the busi-

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[1] Auctioneers, Collection Agencies, Commercial Divers, Debt Adjusting, Fortune Tellers, Landscape Architects, Laundries, Masseurs, Medical Service Corporations, Naturopaths, Pawn Brokers, Rooming Houses, TV and Radio Repairmen, and Watch Repairmen.

ness (§575), prohibiting practices which the legislature considered inimical to commercial and professional ethics (listed in §576), requiring access to the agency's business records (§580), and providing means for the orderly liquidation of an agency in default of its claimants (§581), are eminently appropriate and reasonable means toward public assurance that persons handling other's claims are trustworthy, that collection procedures will be kept within commercially and legally acceptable bounds, and that claims by forwarders and creditors will be protected.

Plaintiff aims his criticism grounded upon constitutional prohibitions,[2] at Sections 571, 572, and 575 only. These prohibitions will be considered seriatim.

Ex post facto issue

This statute is not an *ex post facto* law constitutionally prohibited. Such "(a) law is ex post facto (after the deed or fact,) when (1) it makes a criminal offense of what was innocent when done; or (2) it aggravates a crime, making it greater than it was when committed; or (3) it inflicts a punishment more severe than was prescribed at the time the crime was perpetrated; or (4) it alters the rules of evidence to the injury of the accused; or (5) it, in effect if not in purpose, deprives him of some protection to which he has become entitled. The expression relates solely to crimes and their punishment, and has no application to civil matters." In re John M. Stanley, 133 Me. 91, 93, 174

[2] "Impairment of Contracts" and "ex post facto law" under U. S. Constitution, Article I, Section 10; Maine Constitution Article , Section 11.

"Due Process," "equal protection" and "unjust discrimination" under U. S. Constitution in Amendment XIV, Section 1; and Maine Constitution in Article I, Section 6-A.

A. 93, affirmed in Stanley v. Public Utilities Commission, 295 U. S. 76, 55 S. Ct. 628, 79 L. Ed. 1311. See also Hawker v. People of State of New York (1898) 170 U. S. 189, 196, 18 S. Ct. 573, 42 L. Ed. 1002; Meffert v. State Board of Medical Registration and Examination (1903) 66 Kan. 710, 72 P. 247, 251, 1 L. R. A., N. S., 811 (bottom column 1); Page v. Watson (1938) 140 Fla. 536, 192 So. 205, [4] 210, 126 A. L. R. 249; McDonough v. Goodcell (1939) 13 Cal. 2d 741, 91 P. 2d 1035, [19, 20] 1041, 123 A. L. R. 1205; Frazier v. Goddard (D. C. Okl. 1945) 63 F. Supp. 696, [4] 698; Konigsberg v. State Bar of California (1961) 366 U. S. 36, 81 S. Ct. 997, [9, 10] 1005, 6 L. Ed. 2d 105; and Smith v. The State of California (9 CCA, 1964) 336 F. 2d 530, [6] 534.

The rationale is expressed in *Hawker*, supra, a leading case, 170 U. S. at page 200, 18 S. Ct. on page 577, where the majority of the court said:

> "The thought which runs through these cases and others of similar import which might be cited is that such legislation is not to be regarded as a mere imposition of additional penalty, but as prescribing the qualifications for the duties to be discharged and the position to be filled, and naming what is deemed to be, and what is in fact, appropriate evidence of such qualifications."

Impairment of Contract Issue

This issue is raised only by the implication that on January 1, 1966 plaintiff had contractual relations with clients which the requirement of license, denied him, impaired. The record does not establish that such contracts in fact existed, but, if so, the law is not unconstitutionally defec-

tive in this respect. See In re Guilford Water Company (1919) 118 Me. 367, 372, 108 A. 446, where appears "(t)he rule is general that every contract touching matters within the police power must be held to have been entered into with the distinct understanding that the continuing supremacy of the state, if exerted for the common good and welfare, can modify the contract when and as the benefit of that interest properly may require." Also Baxter v. Waterville Sewerage District, 146 Me. 211, 218, 79 A. 2d 585. This rule is reiterated and applied in American Budget Corp. v. Furman, 67 N. J. Super. 134, 170 A. 2d 63, [9] 69; affirmed by the court of last resort (1961) 36 N. J. 129, 175 A. 2d 622, against an attack on a statute in substance outlawing the business of debt adjusting.

The plaintiff, never having been licensed, can base no challenge of the statute upon the false premise that the relationship between the State and him, as a licentiate, is contractual, which contract the statute impairs. 33 Am. Jur., Licenses §21, and see Hughes v. State Board of Medical Examiners (1926) 162 Ga. 246, 134 S. E. 42, [4] 47.

"Due Process," "Equal Protection" *and*
"Unjust Discrimination" Issues

There is case law in abundance recording unsuccessful attacks founded upon these constitutional issues upon licensing statutes. The majority in number of these cases arose by reason of the complainant's license having been revoked on account of disqualifying conduct.

The minority in number have arisen by virtue of the licensing board's denial of license because of disqualifying conduct. We consider that the constitutional issues here raised have equal application to each situation. The

constitutional validity of denying a license rests upon the same ground as the constitutional validity of revoking a previously granted license. In each case constitutional due process as to "hearing" is implicit.

The salient point of concern here is the statutory provision by which the disqualifying conduct is measured. Many cases turn upon disqualification expressed in general terms, the interpretation and application of which rests with the board of licensure.

Revocations: See as to medical doctors, "unprofessional conduct" (including by definition acts mala prohibitum or mala in se and mental incompetency) Hubbard v. Washington State Medical Disciplinary Board (1960) 55 Wash. 2d 546, 348 P. 2d 981; "gross immorality" Meffert v. State, supra (Kan. 1903); "misconduct" Ladrey v. Commission on Licensure to Practice The Healing Art in The District of Columbia (1958) 104 U. S. App. D. C. 239, 261 F. 2d 68; "conviction of crime involving moral turpitude" Hughes v. State Board of Medical Examiners (1926) 162 Ga. 246, 134 S. E. 42.

See as to dentists, "immoral or dishonorable conduct" South Carolina State Board of Dental Examiners v. Breeland (1946) 208 S. C. 469, 38 S. E. 2d 644, 167 A. L. R. 221; "moral turpitude" Brun v. Lazzell (1937) 172 Md. 314, 191 A. 240, 109 A. L. R. 1453.

See as to osteopath, "Unprofessional and dishonorable conduct" (including by definition, drug addiction, knowingly making false documents in connection with practice) Rose v. State Board of Registration for the Healing Arts (Mo. 1965) 397 S. W. 2d 570.

See as to druggists, "abuse of (professional) trust" Straight v. Crawford (1888) 73 Iowa 676, 35 N. W. 920.

See as to suspension of Attorney at Law, "commission of 'any act contrary to honesty, justice or good morals'" In re Morris (1965) 74 N. M. 679, 397 P. 2d 475; as to disbarment for lack of "good moral character" Sanborn v. Kimball (1875) 64 Me. 140; and Ex parte Wall (1882) 107 U. S. 265, 2 S. Ct. 569, 27 L. Ed. 552.

Denials of license: Requirement that applicant be without "infirmity of body or mind," and "criminal record" to be considered Kaufman v. Taxicab Bureau, Baltimore City Police Department (1964—Applicant for taxi license) 236 Md. 476, 204 A. 2d 521; conviction of misdemeanor for dispensing drugs without prescription, Thomas v. Board of Pharmacy (1910—druggist) 152 N. C. 373, 67 S. E. 925; requirement of "good moral character" and fitness and propriety to engage in the proposed business, McDonough v. Goodcell (1939—bail bonding) 13 Cal. 2d 741, 91 P. 2d 1035, 123 A. L. R. 1205; requirement of "good moral character" and non-advocacy of violent overthrow of state or federal government, Konigsberg v. State Bar of California (1961—applicant for admission to bar) 366 U. S. 36, 81 S. Ct. 997, 6 L. Ed. 2d 105.

Our statute differs from those involved in the cases just cited, in that the responsibility of the licensing board to determine quasi-judicially whether or not the alleged conduct falls within the statutory proscription is substantially obviated. By express terms of Section 575:

"No license shall be granted to an applicant * * * if such applicant * * *, has been convicted * * * of the crime of * * *, embezzlement, * * *, of which the record of conviction * * * shall be conclusive evidence."

This expression of disqualification is even more specific than that in those cases in which a license has been revoked for conviction of a "felony." Page v. Watson (1938—physician) 140 Fla. 536, 192 So. 205, 126 A. L. R. 249; United States v. Goodloe (D. C. of D. C. 1964—physician) 228 F. Supp. 164; and conviction of a "crime" Munkley v. Hoyt et al. (1901—pharmacist) 179 Mass. 108, 60 N. E. 413. Of particular significance is the holding in DeVeau v. Braisted (1960) 363 U. S. 144, 80 S. Ct. 1146, 4 L. Ed. 2d 1109, in which the State of New York disqualified ex-felons from waterfront union offices, and in upholding the statute, plurality of the Court said in [3] at page 1154:

> "Barring convicted felons from certain employments is a familiar legislative device to insure against corruption in specified, vital areas. Federal law has frequently and of old utilized this type of disqualification.[4] * * * State provisions disqualifying convicted felons from certain employments important to the public interest also have a long history. See, e.g., Hawker v. People of State of New York, 170 U. S. 189, 18 S. Ct. 573, 79 L. Ed. 1311, * * *. The question in each case (page 1155) where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession. See Hawker * * *."

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[4] 5 U. S. C. A. Executive Departments and Government Officers and Employees: Persons convicted of stated offenses "prior to, on

Paraphrasing *DeVeau* from page 1155 of 80 S. Ct., "No doubt is justified regarding the legislative purpose" of the Maine statute. The law is "not to punish ex-felons, but to devise what was felt to be" appropriate regulation for an activity in the public interest. The rationale of *DeVeau* was later applied in Flemming v. Nestor, 363 U. S. 603, 80 S. Ct. 1367, 4 L. Ed. 2d 1435.

While in general we have equated the principle concerned in revocation of a license with those concerned in denial of a license, plaintiff urges that his "disqualification" occurred prior to the effective date of the licensing

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or after September 1, 1954" (effective date of the statute) disqualify for annuity or retirement pay, §2282.

8 U. S. C. A. Aliens and Nationality: Loss of nationality upon conviction by court martial of desertion in time of war, or treason, inter alia, §1484.

10 U. S. C. A. Armed Forces: No felon may be enlisted or mustered into the Army, §3253, or Air Force, §8253.

18 U. S. C. A. Crimes and Criminal Procedure: Numerous instances of disqualification from holding "any office of honor, trust, or profit under the United States" by virtue of officer or employee accepting bribe, §202; same as to Members of Congress, Judicial Officers and Judges, §§205-207; same as to officer or Members of Congress for accepting pay for contract procurement, §216; or where compensation is received for participating on behalf of interests in conflict with that of the United States, §281; or practicing before a Court of claims, §282; or any officer of the Armed Forces installing troops at any place of general or special election, §592. Any collecting or disbursing officer of the United States trading in public property is disqualified for "holding any office under the United States", §1901; same as to person concealing, removing, etc., public records, §2071; same as to one owing allegiance to the United States who "adheres" to an enemy of the United States, §2381. Whoever promotes insubordination etc., in the Armed Forces is disqualified for employment by the United States for a period of 5 years, §2387.

28 U. S. C. A. Judiciary: Convicted felons inter alia disqualified for federal jury service, §1861.

38 U. S. C. A. Veterans Benefits: Anyone convicted of subversive activity is disqualified for veterans benefits, §3505.

statute and that that is a fact of controlling significance, apart from its claimed *ex post facto nature*. Not so. The statute speaks in the present and only declares that past conduct is to be considered in determining present fitness for engagement in the proposed activity, a praesenti or in futuro. See under "denials of license" McDonough v. Goodcell (1939), 13 Cal. 2d 741, 91 P. 2d 1035, [19, 20] 1041, 123 A. L. R. 1205 and *Hawker*, supra, 170 U. S. at page 200, 18 S. Ct. 573, 42 L. Ed. 1002. An attack upon an "habitual criminal" statute which was applied to a conviction occurring before the statute became effective, upon constitutional grounds, was summarily held to be without merit in State v. Chamineak (Mo. 1941) 343 S. W. 2d 153, [20] 163, and Lawrence v. Commonwealth (1965) 206 Va. 51, 141 S. E. 2d 735, [1] 736. A challenge to a Federal Firearms Act which prohibited one previously convicted of a crime of violence to possess firearms was upheld in Cases v. U. S. (1 CCA, 1942) 131 F. 2d 916, [5, 6] 921 where the Court said legality of present conduct may depend upon past behavior "even behavior before the passage of the regulatory act."

Attacks upon identical grounds by complainants who purport to engage in business involving the financial community have been no more successful. See American Budget Corp. v. Furman (1961—debt adjusting) 67 N. J. Super. 134, 170 A. 2d 63, [9] 69, affirmed by Court of last resort (1961) 36 N. J. 129, 175 A. 2d 622; Ferguson v. Skrupa (Kan. 1963—debt adjusting) 372 U. S. 726, 83 S. Ct. 1028, 10 L. Ed. 2d 93; State ex rel Clark v. Brown (1965—budget counseling) 1 Ohio St. 2d 121, 205 N. E. 2d 377; Hankins v. Spaulding (1957—collection agency) 78 Idaho 533, 307 P. 2d 222.

Examination of the cases cited negatives the validity of plaintiff's constitutional contentions, including that which labels our statute as "unjustly discriminating." In this respect the principles reviewed in Associated Hospital Service of Maine v. Mahoney et al., 161 Me. 391, 409, 213 A. 2d 712, apply and support the "collection agency" classification as valid.

Our statute is valid, and injunctive relief is denied.

So ordered.

APPENDIX B

PROFESSIONS AND OCCUPATIONS

Chapter 10

COLLECTION AGENCIES

(1965, c. 430, §1 eff. Jan. 1966)

§571. Definitions

The following words and terms, as used in this chapter, shall be construed as follows:

1. *Collection agency.* "Collection agency" means and includes any person engaged in the business of collecting for others any account, bill or other indebtedness. It includes persons who furnish collection systems carrying a name which simulates the name of a collection agency and who supply forms or form letters to be used by the creditor even though such forms direct the debtor to make payments directly to the creditor rather than to such fictitious agency.

2. *Commissioner.* "Commissioner" means the Bank Commissioner.

3. *Person.* "Person" means and includes individuals, partnerships, associations or corporations.

§572. Exclusions

The term "collection agency" shall not include persons whose collection activities are confined to and are directly

related to the operation of a business other than that of a collection agency such as but not limited to banks, savings banks, credit unions, credit union leagues, real estate brokers, public officers or persons acting under order of a court, lawyers, trust companies, building and loan associations, savings and loan associations.

§573. Licenses

1. *Licenses required.* Except as hereinafter provided, no person shall conduct within this State a collection agency or engage within this State in the business of collecting claims for others as defined in this chapter, without having first applied for and obtained a license.

2. *Penalty.* Any person who shall carry on business as a collection agency without first having obtained a license pursuant to this section, or who shall carry on such business after the revocation, suspension or expiration of any license shall be guilty of a misdemeanor and punishable by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or by both.

3. *Licenses.* Licenses granted by the commissioner under this section shall be for a period of one year from the first day of January following the effective date of this Act, and annually thereafter such license may be renewed so long as the commissioner regards the business as responsible and safe, but in all cases to terminate unless renewed on the first day of the succeeding January. Each license shall plainly state the name and business address of the licensee and shall be posted in a conspicuous place in the office where the business is transacted. The fee for each license shall be $100. If the licensee desires to carry on

business in more than one place within the State, he shall procure a license for each place where the business is to be conducted.

4. *Commissioner.* The commissioner may require such financial statements and references of all applicants for a license as he deems necessary; and may make or cause to be made an independent investigation concerning the applicant's reputation, integrity, competence and net worth. Such investigation may cover all managerial personnel employed by or associated with the applicant.

5. *Application for license.* Every application for a license shall be acted upon promptly by the commissioner. If the application shall comply in form and substance with the provisions of this chapter and the rules and regulations promulgated thereunder and the commissioner shall find that the applicant is qualified under this chapter, the commissioner shall issue a license forthwith. If the application shall not be sufficient in form or substance, the commissioner shall reject it and notify the applicant of the manner in which it is deficient. Such rejection shall be without prejudice to the filing of a new application. If the commissioner shall find that the applicant is not qualified under this chapter, he shall reject the application and shall give the applicant written notice of such rejection and the reasons therefor. In addition, any foreign business, incorporated or unincorporated, before obtaining such license in order to engage in the business of a collection agency within the State of Maine, must furnish the commissioner with:

A. A certified copy of its charter and bylaws;

B. A power of attorney appointing the commissioner to be the true and lawful attorney of such business in and for this State, upon whom all lawful process in an action or proceeding against the business may be served with the same effect as if the business existed in this State. Said power of attorney shall stipulate and agree on the part of the business that any lawful process against the company which is served on said attorney shall be the same in legal force and validity as if served on the business itself, and that the authority shall continue in force irrevocable so long as any liability remains outstanding against the business in this State. A certificate of such appointment, duly certified and authenticated shall be filed in the office of the commissioner and copy certified by him shall be received in evidence in all courts of this State.

§574. Bond

The commissioner shall require each licensee to file and maintain in force a surety bond, in a form to be prescribed by the commissioner and acceptable to him, and in such sum as he may deem reasonably necessary, to safeguard the interests of the public. The bond may be cancelled by the surety thereon by giving 30 days' notice to the Bank Commissioner but such cancellation shall not in any manner affect the liability of the surety as to anything occurring prior thereto.

§575. Prior convictions as disqualifications

No license shall be granted to any applicant if an individual or to any partnership or corporate applicant if such applicant or any partner of a partnership applicant

or officer or director of a corporate applicant, or employee of the foregoing, has been convicted in any state or federal court of the crime of forgery, fraud, obtaining money under false pretenses, embezzlement, extortion, larceny, burglary, breaking and entering, robbery, criminal conspiracy to defraud, or bribery, of which the record of conviction or a copy certified by the clerk or judge of the court shall be conclusive evidence. No license shall be granted to any lawyer whose license to practice law has been suspended or revoked, during the effective period of such suspension or revocation.

§576. Prohibited practices

No collection agency shall: Threaten to bring legal action or list the name of the lawyer; use or employ justices of the peace, constables, sheriffs, or any other officer authorized to serve legal papers in connection with the collection of a claim; use or threaten to use physical violence in connection with the collection of claims; furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so, or institute judicial proceedings on behalf of others; communicate with debtors in the name of a lawyer or upon the stationary of a lawyer, or prepare any forms or instruments which only lawyers are authorized to prepare; solicit, purchase or receive assignments of claims for the purpose of collection, or institute suits thereon in any court; use instruments which simulate the form and appearance of judicial process; exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so and the agency's course of conduct is at all times consistent with the true relation-

ship of attorney and client between the lawyer and the creditor; demand or obtain in any manner a share of the compensation for services performed by a lawyer in collecting a claim; publish or cause to be published any list of debtors except for credit reporting purposes or threaten to do so; use "shame cards," "shame automobiles," or similar devices, methods of intimidation or methods contrary to postal regulations to collect accounts; refuse to return any claim or claims upon written request of the creditor, claimant or forwarder after the tender of such amounts, if any, as may be due and owing to the agency; advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, unless such agency is acting as the assignee for the benefit of creditors or acting under an order of court; refuse or intentionally fail to account to its clients for all money collected within 60 days from the last day of the month in which the same is collected; refuse or intentionally fail to return to the creditor all valuable papers deposited with a claim when such claim is returned; refuse or fail to furnish at intervals of not less than 90 days, upon the written request of the claimant or forwarder, a written report upon claims received from such claimant or forwarder; operate under a name or in a manner which implies that such agency is a branch of or associated with any department of the Federal Government or of any state or municipal government, or use any seal, insignia, envelope or other format which simulates that of any government department or agency; commingle money collected for a customer with the agency's own funds or use any part of a customer's money in the conduct of the agency's business; or share quarters or office space, or have a common waiting room with a practicing lawyer; make repeated or harassing communications to employers,

or make collect telephone calls by subterfuge; engage in the business of lending money to any person, or contact any person for the purpose of securing a loan for any person with which to pay any claim left with it for collection, or recommend or suggest any person or persons as a source of funds to pay any such claim; collect or attempt to collect from any person an amount in excess of the amount legally due to the creditor.

§577. Application in case of pretended purchase or assignment

This chapter shall apply to any person who, by any device, subterfuge or pretense, makes a pretended purchase or takes a pretended assignment of accounts from any other person for the purpose of evading this chapter.

§578. Investigation, suspension and revocation of licenses

The commissioner may investigate the collection records of a licensee and for that purpose the commissioner shall have free access to the books and records of a licensee relating thereto. If a licensee violates any provisions of this chapter, or any administrative rules issued pursuant to this chapter, or fails to maintain its financial condition sufficient to qualify for a license on an original application, the commissioner may, after notice and hearing in accordance with the laws of this State governing proceedings before the Bank Commissioner, under Title 9, revoke a license or suspend such license for such period as he may deem proper. Any such revocation or suspension may be reviewed by the Credit and Collection Board upon request of the licensee made within 30 days of the revocation or suspension. Any appeal from the decision of the board

may be taken in accordance with Title 5, chapters 305 and 307.

§579. Appeals

1. *Event of rejection.* In the event of the rejection of an application for a license or the renewal thereof filed under this chapter or of the suspension or revocation of a license granted under this chapter, the applicant or licensee may, within 30 days after receipt of notice of such rejection, suspension or revocation, file an appeal and thereafter prosecute the appeal in accordance with the statutes governing appeal from, or review of, decisions of the Bank Commissioner.

2. *Filing of appeal.* The filing of an appeal from an order of the commissioner rejecting an application for a license by a collection agency engaged in business as of the effective date of this Act, or rejecting an application for the renewal of a license, or suspension or revoking a license within 60 days after the date of such order, shall operate as a supersedeas which shall continue pending final determination of such appeal.

§580. Reports and records

1. *Financial statements.* The commissioner may at any time require a licensee to submit to the department a verified financial statement for examination by the commissioner so that he may determine whether the licensee is financially responsible to carry on a collection agency business within the intents and purposes of this chapter.

2. *Books and records.* Each licensee shall maintain a place of business in this State, and the commissioner shall

require the licensee to keep such books and records in his place of business in this State as will enable the commissioner to determine whether the provisions of this chapter are being complied with. Every such licensee shall preserve the records of final entry used in such business for a period of 6 years after final remittance is made on any account placed with the licensee for collection or after any account has been returned to the claimant on which one or more payments have been made.

§581. Delinquent collection agencies

1. *Insolvency.* If the commissioner shall determine that a licensee is involvent or that he has collected accounts but has failed to remit money due to any claimant or forwarder within 60 days from the end of the month in which collection was made, or when the license of a collection agency has expired or terminated for any reason whatsoever, the commissioner, if he shall determine such action necessary to protect the public interest, may apply to the Superior Court within and for the county in which the main office of such agency is located for an order authorizing him to take possession of the assets and the books and records of the licensee for the purpose of liquidating its business and for such other relief as the nature of the case and the interest of the claimants or forwarders may require. The court, after citing the licensee to show cause why the commissioner should not be authorized to take possession of the assets and books of account and records for the purpose of liquidating the business of the licensee, and after hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss the application or, if it shall find such action necessary

for the protection of the public, issue its order authorizing the commissioner to take possession of the said books and records and to liquidate the business and granting such other relief as it may deem necessary under the circumstances.

2. *Powers and duties.* In every case where the court shall issue an order authorizing the commissioner to take possession of the said books and records and to liquidate the business of a licensee, the commissioner shall be vested with all of the powers, duties, authority and responsibility of a receiver, and without limiting the generality of the foregoing and subject to the approval of the court;

A. The liquidation of the business shall be made by and under the supervision of the commissioner either in the name of the commissioner or in the name of the licensee, and the commissioner or his successor shall be vested with title to all of the assets including the proceeds of the financial security which has been filed with the commissioner and the proceeds of any and all money paid direct to the claimant or forwarder by any debtor prior to the date of the order. Money paid to the licensee or to the commissioner after the date of the order shall be disposed of by the commissioner.

B. The commissioner for the purpose of collection or liquidation may sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of such collection agency under such terms and conditions as the commissioner may deem best for the best interests of the claimants of such collection agency.

C. The commissioner shall cause notice to be given by advertisement in such newspapers as he may direct weekly for 4 consecutive weeks after the issue of the order authorizing him to take possession of the assets of the collection agency, calling on all persons who may have claims against such licensee to bring the same to the commissioner and make legal proof thereof at a place and within a time to be therein specified. The commissioner shall mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the commissioner. Any claimant or forwarder whose portion of the collection or collections has not been properly remitted shall file a claim which shall be allowed for the amount actually due the claimant or forwarder after deduction of commission or fee that may be due and owing the licensee. If the commissioner doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of service of such notice which shall be prima facie evidence thereof shall be filed with the commissioner. The claimant may within 30 days after receipt of notice of rejection file a petition in the court in which the proceedings are pending to establish his claim or claims. Claims presented after the expiration of the time and fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation unless otherwise ordered by the court. The court may fix a date after which all claimants may be barred.

D. Whenever the commissioner shall have paid to each and every claimant or forwarder of such collec-

tion agency whose claims as such claimant or forwarder have been duly approved and allowed the full amount of such claims and shall have made proper provisions for unclaimed and unpaid collections and shall have paid all the expenses of the liquidation, he shall distribute the remaining assets exclusive of the proceeds of the financial security for the benefit of the general creditors. Any amount remaining after all claimants and forwarders and general creditors have been paid in full shall be turned over to the licensee.

E. All accounts and valuable papers given to the agency by the claimant or forwarders in possession of the commissioner pertaining to accounts placed with the agency for collection shall be returned to the claimant or forwarder by the commissioner within 30 days after verification of the claim has been made.

F. Nothing herein contained shall preclude a creditor of a collection agency from prosecuting any and all legal actions and pursuing any and all remedies afforded him by the laws of this State for collection of debts until such time as the commissioner shall take possession of the collection agency under this section.

§582. Rule making power

The commissioner may make such reasonable rules and regulations, not inconsistent with this chapter, pertaining to the operation of the business of licensees as he may deem necessary to safeguard the interest of the public. Such rules and regulations shall be adopted in the manner prescribed in Title 9, section 6, subsection 4. The Credit and Collection Board shall perform the functions and enjoy the

privileges of the advisory committee referred to in that section.

§583. Credit and Collection Board

The commissioner shall appoint a Credit and Collection Board, with each member to serve a term of 3 years from date of appointment, and such board shall have power, jurisdiction and authority to make recommendations to the Department of Banks and Banking relative to collection agencies, their administration and supervision, and to investigate the conditions and ascertain the facts with reference to the collection of accounts and other matters of a particular collection agency when the license of a collection agency has been revoked or suspended by the commissioner. The Credit and Collection Board will be composed of the commissioner and 4 individuals engaged in the collection business in the State and subject to this law. The Credit and Collection Board shall receive no compensation for their services but may be reimbursed for their actual and necessary traveling expenses. Such expenses shall be audited and paid and charged to the Department of Banks and Banking for the administration of this chapter.

(Letterhead of the State of Maine,
Department of State, Augusta, Maine 04330)

June 13, 1967

Professor Sanford J. Rosen
University of Maryland Law School
500 West Baltimore Street
Baltimore, Md. 21201

Dear Professor Rosen:

This is to advise you that on January 10, 1967 a Mr. Rupert Watson filed a petition for pardon with this Department.

The hearing before the Governor and Executive Council took place on April 5, 1967 and on April 7, 1967 the Governor and Council denied his petition for pardon.

Yours very truly,

/s/ STANLEY F. HANSON, JR.
STANLEY F. HANSON, JR.
Deputy Secretary of State

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STATE OF MAINE

DEPARTMENT OF STATE

I, JOSEPH T. EDGAR, Secretary of State, certify that the paper to which this is attached, is a true copy from the records of this office.

IN TESTIMONY WHEREOF, I have caused the Great Seal of the State to be hereunto affixed. GIVEN under my hand at Augusta, this thirteenth day of June in the year of our Lord one thousand nine hundred and sixty-seven and in the one hundred and ninety-first year of the Independence of the United States of America.

/s/ JOSEPH T. EDGAR
Secretary of State

(SEAL)

Report #23

STATE OF MAINE

In Council, April 5, 1967

In re: Petition for Pardon of
RUPERT WATSON of Brewer, Maine

The Governor recommended that pardon be denied.

The above recommendation was sustained by the Council, the vote being unanimous.

/s/ Signature illegible
Chairman

Attest: /s/ JOSEPH T. EDGAR, Secretary of State